

Form <b>8397</b> (Rev. December 1998)	Department of the Treasury – Internal Revenue Service <b>Employee Plan Deficiency Checksheet</b> <b>Attachment #7</b> <b>Top-Heavy Plans</b>	Date
<i>For IRS Use</i>	Please furnish the amendment(s) requested in the section(s) checked below.	
707	Section _____ of the plan should be amended to provide for the use of a vesting schedule at least as favorable as three-year 100% vesting or six-year graded vesting for a plan year for which the plan is top-heavy.	
II.a.	IRC section 416(b) and Regs. section 1.416-1, V-1 through V-7.	
710, 711	A defined benefit plan must, for a year that the plan is top-heavy, provide a minimum annual benefit equal to the lesser of 20%, or 2% per year of service, of each non-key employee's average compensation from the employer for the five highest consecutive years. Section _____ of the plan should be amended accordingly.	
II.b.(i)(a) and (b)	Regs. section 1.416-1, M-1 through M-6, and M-13.	
713	Each non-key employee who is a plan participant and who has completed at least 1,000 hours of service (or the equivalent) during an accrual computation period must accrue a minimum benefit in accordance with the top-heavy rules regardless of the non-key employee's level of compensation. Section _____ of the plan should be amended accordingly.	
II.b.(ii)(a)	Regs. section 1.416-1, M-1 through M-6, and M-13.	
714	Each non-key employee who is a plan participant and who has completed at least 1,000 hours of service (or the equivalent) during an accrual computation period must accrue a minimum benefit in accordance with the top-heavy rules regardless of whether a non-key employee declines to make a mandatory contribution to a plan that generally requires such information. Section _____ of the plan should be amended accordingly.	
II.b.(ii)(b)	Regs. section 1.416-1, M-1 through M-6, and M-13.	
715	Each non-key employee who is a plan participant and who has completed at least 1,000 hours of service (or the equivalent) during an accrual computation period must accrue a minimum benefit in accordance with top-heavy rules regardless of whether a non-key employee is employed on a specified date, such as the last day of the year. Section _____ of the plan should be amended accordingly.	
II.b.(ii)(c)	Regs. sections 1.416-1, M-1 through M-6, and M-13.	
716	Section _____ of the plan should be amended to preclude the forfeiture of a minimum benefit due to the withdrawal of a mandatory employee contribution. Regs. sections 1.416-1, M-1 through M-6, and M-13.	
II.b.(iii)		
718	Section _____ of the plan should be amended to provide for a minimum contribution (i.e., allocation) for a year in which the plan is top-heavy of not less than 3% of compensation per year (within the meaning of section 415), or, if less than 3%, the highest rate allocated to any key employee. Regs. sections 1.416-1, M-7, M-10, and M-11.	
II.c.(1)		
719	Section _____ of the plan should be amended to provide that if the highest rate allocated to a key employee, for a year in which the plan is top-heavy is less than 3%, amounts contributed as a result of a salary reduction agreement must be included in determining contributions made on behalf of key employees. Regs. sections 1.416-1, M-7, M-10, and M-11.	
II.c.(2)		
721	Section _____ of the plan should be amended to provide that for a year in which the plan is top-heavy, each non-key employee will receive a minimum contribution if the participant has not separated from service at the end of the plan year, regardless of whether the non-key employee has less than 1,000 hours of service (or the equivalent). Regs. sections 1.416-1, M-7, M-10, and M-11.	
II.c.(3)(a)		
722	Section _____ of the plan should be amended to provide that for a year in which the plan is top-heavy, each non-key employee will receive a minimum contribution if the participant has not separated from service at the end of the plan year, regardless of the non-key employee's level of compensation. Regs. sections 1.416-1, M-7, M-10, and M-11.	
II.c.(3)(b)		

723		Section _____ of the plan should be amended to provide that for a year in which the plan is top-heavy, each non-key employee will receive a minimum contribution if the participant has not separated from service at the end of the plan year, regardless of whether the employee declines to make a mandatory contribution to the plan that generally requires such a contribution. Regs. sections 1.416-1, M-7, M-10, and M-11.
II.c.(3)(c)		
724		Section _____ of the plan should be amended to preclude the forfeiture of account balances attributable to required minimum contributions if a non-key employee withdraws mandatory contributions.
II.c.(4)		Regs. sections 1.416-1, M-7, M-10, and M-11.
760, 761		Compensation to be used for determining a minimum benefit or a minimum contribution is the compensation described in section 1.415-2(d) of the regulations. Alternatively, compensation that would be stated on an employee's Form W-2 for the calendar year that ends with or within the plan year may be used. The same definition of compensation must be used for all top-heavy purposes except that for the purpose of determining whether an employee is a key employee, with respect to plan years beginning on or after January 1, 1989, the compensation to be used is compensation as defined in section 415(c)(3) of the Code but including employer contributions made pursuant to a salary reduction arrangement. Section _____ of the plan should be amended to properly define compensation. IRC section 416(i)(1)(D) and Regs. sections 1.416-1, T-21, M-2 and M-7.
II.d.		
731		Section _____ of the plan should be amended to properly define determination date. A determination date is the last day of the preceding plan year, or in the case of the first plan year, the last day of such year. Key employee and top-heavy tests are made as of the determination date. IRC section 416(g)(4)(C) and Regs. sections 1.416-1, T-22, and T-23.
III.a.(1)		
732		Section _____ of the plan should be amended to properly define valuation date. A valuation date is the annual date on which plan assets must be valued for the purpose of determining the value of account balances or the date on which liabilities and assets of a defined benefit plan are valued. For the purposes of the top-heavy test, the valuation date for a defined benefit plan must be the same valuation date used for computing plan costs for minimum funding. The valuation date for a defined contribution plan must be the most recent valuation date within a 12-month period ending on the determination date. Regs. sections 1.416-1, T-24, and T-25.
III.a.(2)		
733		Section _____ of the plan should be amended to properly define required aggregation group. Each plan of an employer in which a key employee participates (in the plan year containing the determination date or any of the four preceding plan years) and each other plan which enables any plan in which a key employee participates during the period tested to meet the requirements of section 401(a)(4) or 410(b), are required to be aggregated for top-heavy testing purposes and are considered the required aggregation group. All employers aggregated under Code sections 414(b), (c), or (m) are considered a single employer. IRC section 416(g)(2)(A)(i), Regs. sections 1.416-1, T-6, T-9, and T-10.
III.a.(3)		
734		Section _____ of the plan should be amended to properly define permissive aggregation group. A permissive aggregation group is one or more plans that are not required to be aggregated but which may be aggregated with a required aggregation group. A plan may be permissively aggregated only if the resulting aggregation group satisfies the requirements of sections 401(a)(4) and 410. IRC section 416(g)(2)(A)(ii), Regs. sections 1.416-1, T-7, T-8, and T-11.
III.a.(4)		
735, 736		Section _____ of the plan should be amended to properly define top-heavy ratio. A defined benefit plan is top-heavy when the ratio of the present value of accrued benefits for key employees to the present value of accrued benefits for all employees exceeds 60%. A defined contribution plan is top-heavy when the ratio of account balances for key employees to account balances for all employees exceeds 60%. If there is more than one plan, the top-heavy ratios must be consolidated by adding together the numerators and then adding together the denominators to form one ratio. IRC section 416(g)(1) and Regs. sections 1.416-1, T-1, T-23 through T-32, and T-39.
III.a.(5)		

763, 764		Section _____ of the plan should be amended to properly define key employee. As defined in IRC section 414(q), a key employee is any employee or former employee who at any time during the plan year
III.a.(6)		containing the determination date, or the four preceding plan years, is or was: (1) an officer of the employer having annual compensation for such plan year which is in excess of 50 percent of the dollar limit in effect under section 415(b)(1)(A) for the calendar year in which such plan year ends; (2) an owner (or considered as owning within the meaning of section 318) both more than an 1/2 percent interest as well as one of the ten largest interests in the employer and having annual compensation greater than the dollar limit in effect under section 415(c)(1)(A) for the year; (3) a five-percent owner of the employer; or (4) a one-percent owner of the employer who has annual compensation of more than \$150,000. For purposes of determining five-percent and one-percent owners, neither the aggregation rules nor the rules of subsections (b), (c) and (m) of section 414 apply. Beneficiaries of an employee acquire the character of the employee who performed service for the employer. Also, inherited benefits will retain the character of the benefits of the employee who performed services for the employer. IRC section 416(j), Regs. sections 1.416-1, T-12 through T-21.
739		Section _____ of the plan should be amended to properly define non-key employee. A non-key employee is any employee who is not a key employee. Non-key employees include employees who are
III.a.(7)		former key employees. IRC section 416(i)(2), Regs. sections 1.416-1, T-1 and T-12.
740		Section _____ of the plan should be amended to provide that the accrued benefits and account balances that are to be taken into account in determining top-heaviness relate to the proper determination
III.b.		date. IRC section 416(g), Regs. sections 1.416-1, T-22 through T-25.
741		Section _____ of the plan should be amended to specify the actuarial assumptions used to determine the present value of accrued benefits for purposes of the top-heavy test. Regs. section 1.416-1,
III.c.	T-26.	
742		Section _____ of the plan should be amended to provide that if an aggregation group includes two or more defined benefit plans, the same actuarial assumptions must be used with respect to all such plans
III.d.		and must be specified in such plans. Regs. section 1.416-1, T-19.
743		Section _____ of the plan should be amended to provide that proportional subsidies are ignored when testing for top-heaviness in a defined benefit plan. Regs. sections 1.416-1, T-26 and T-27.
III.e.		
744		Section _____ of the plan should be amended to provide that non-proportional subsidies are considered when testing for top-heaviness in a defined benefit plan. Regs. sections 1.416-1, T-26 and T-27.
III.f.		
745		Section _____ of the plan should be amended to provide that, for purposes of determining whether the plan is top-heavy, a participant's accrued benefit in a defined benefit plan will be determined under a uniform accrual method which applies in all defined benefit plans maintained by the employer or, where there is no such method, as if such benefit accrued not more rapidly than the slowest rate of accrual permitted under the fractional rule of section 411(b)(1)(C). IRC section 416(g)(4)(F).
III.g.		
746		Section _____ of the plan should be amended to provide the appropriate top-heavy minimums. If an employer maintains more than one plan, non-key employees covered under only a defined benefit plan must receive the defined benefit minimum. Non-key employees covered only by a defined contribution plan must receive the defined contribution minimum. Where all plans involved are defined contribution plans, only one plan need provide the minimum contribution for all participants of the required aggregation group. IRC section 416(f), Regs. sections 1.416-1, M-8, and M-12.
IV.a.		

747, 748, 749		Section _____ of the plan should be amended to provide that if an employer maintains more than one plan, the top-heavy minimums must be properly coordinated by a specified approach. If both defined contributions and defined benefit plans exist, the top-heavy minimums may be coordinated by one of the approaches described below:
IV.b., c. and d.		<ol style="list-style-type: none"> <li>1. Provide appropriate minimums in each plan, IRC section 416(f) and Regs. section 1.416-1, M-8, M-12; or</li> <li>2. Provide a defined benefit minimum in the defined benefit plan, which is offset by the benefits provided under the defined contribution plan, Regs. section 1.416-1, M-12 and Rev. Rul. 76-259, 1976-2 C.B. 111; or</li> <li>3. Make a comparability analysis to prove that the defined contribution plans are providing benefits at least equal to the minimum defined benefit, Regs. section 1.416-1, M-12; or</li> <li>4. Provide a safe harbor minimum contribution plan. If contributions and forfeitures under the defined contribution plan equal 5 percent of compensation for each year the plan is top-heavy, such minimum will be presumed to satisfy the section 416 minimum. Regs. sections 1.416-1, M-12, M-13, and M-15.</li> </ol>
755		If employees who are covered under a defined benefit (defined contribution) plan could also be included in a defined contribution plan (or vice versa) of the employer, a factor of 1.0 must always be applied to the dollar limit when the top-heavy ratio exceeds 90%. Section _____ of the plan should be amended accordingly.
V.b.		IRC section 416(h)(1) and Regs. section 1.416-1, T-33.
756, 757, 758		If the top-heavy ratio does not exceed 90% and the employer uses a factor of 1.25 in the denominator of the IRC section 415 fraction, one of the following approaches must be met:
V.c.1., 2., 3., 4. and 5		<ol style="list-style-type: none"> <li>1. A defined benefit minimum of 3% per year of service (up to 30%) is provided, or</li> <li>2. For participants covered only by a defined contribution plan, a defined contribution minimum of 4% is provided, or</li> <li>3. For participants covered by both types of plans, benefits from the defined contribution minimum are comparable to the 3% defined benefit minimum, or</li> <li>4. The plan provides a floor offset where the floor is a 3% defined benefit minimum, or</li> <li>5. A defined contribution minimum of 7 1/2% of compensation is provided for any non-key employee who is covered under both a defined benefit plan and a defined contribution plan (each of which is top-heavy) of an employer.</li> </ol> <p>Section _____ of the plan should be amended to provide the approach that is to be used by the plan under the circumstances mentioned above. Regs. sections 1.416-1, T-33, M-14, and M-15.</p>